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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,583	07/07/2003	Kevin L. Parsons	89535	7657

24628 7590 03/24/2006

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EXAMINER

WARD, JOHN A

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 03/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/614,583

Applicant(s)

PARSONS, KEVIN L. 

Examiner

John A. Ward

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 78-122 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 78-103 and 114-122 is/are rejected.
- 7) ☒ Claim(s) 104-113 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>032006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The terminal disclaimer filed on March 8, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 6,190,018 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 78-79 and 83-91, 93 and 94-103 are rejected under 35 U.S.C. 102(b) as being anticipated by Lennon et al (US 5,210,525).

Regarding claims 78, 79 and 83-91, Lennon et al ('525) discloses a flashlight comprising of a power supply 43, a LED 23 located at a distal portion of a housing 11, the LED having a first lead, second lead, an electrically conductive member 21 providing a moveable first position and second.

Regarding claims 94-102, figure 2 shows how the power supply 43 is located at one end of the housing and the LED located at a distal end with a portion of the LED outside the housing (figure 2).

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Regarding claims 93 and 103, Lennon et al teaches in column 2, lines 22-50 of the housing having a translucent plastic material, the housing in figure 1 being substantially flat and having a key ring 33.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 80, 82, and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lennon et al.

Regarding claims 80, 82 and 92 Lennon et al discloses all the limitation of the claimed invention except for the housing being made of metal or having different colors.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the housing made of metal and having different colors, since it has been held to be within the general skill of a worker in the art to select a known

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material on the basis of its suitability for the intended use as a matter of obvious design preference. *In re Leshin*, 125 USPQ 416.

Claims 114-122 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lennon et al ('525)

Regarding claims 114-122 disclose all the limitations of the claimed invention as cited in claims 78 and 79 above, but does not disclose the flashlight having a first member and second member.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a first and second member, since it has been held that constructing a formerly integral structure in various elements involves only routine in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Allowable Subject Matter

Claims 104-113 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Nowhere in the prior art is found a housing having a key ring of the flashlight having a key ring that is integral to the housing.

Response to Arguments

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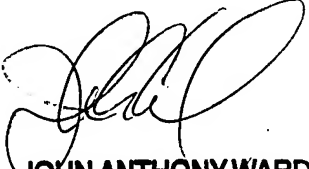
Applicant's arguments with respect to claims 78-122 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Ward whose telephone number is 571-272-2386. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 571-272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JAW
March 20, 2006



JOHN ANTHONY WARD
PRIMARY EXAMINER